

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA
v.
MITCHELL HENNESSEY,
Defendant

Case No. 22-cr-00612

**MITCHELL HENNESSEY'S JOINDER TO
MOTION TO EXCLUDE EXTRANEous EPISODES**

Mitchell Hennessey, joined by defendants Constantinescu, Matlock, Deel, Hrvatin, and Cooperman, respectfully files this joinder to Mr. Rybarczyk's Motion to Exclude Extraneous Episodes (ECF 408) and requests that the Court limit the government's presentation of evidence at trial to evidence pertaining to the 19 securities fraud counts in the superseding indictment.¹

The government states that it intends to introduce evidence at trial regarding the 19 securities fraud counts in the superseding indictment plus an additional 24 stock/time-frame combinations (“Episodes”) referenced in government exhibits 22 through 45. The government then “reserves the right to put before the jury additional episodes based on the trial evidence and arguments made” *See* ECF 377 at 7. The Court should not allow the government to present evidence regarding these additional 24 Episodes or any other “additional episodes” because doing so would unnecessarily lengthen what is already going to be a very long trial.

Counts 2 – 20: The government exhibits for Counts 2 through 20 include allegations that go significantly beyond the allegations in superseding indictment. The government’s expansion

¹ To the extent that the continuance has rendered Mr. Rybarczyk's Motion moot, Mr. Hennessey respectfully requests that the Court construe this joinder as a separate motion to exclude the extraneous episodes.

beyond the superseding indictment includes an expansion of: (1) the number of defendants allegedly involved in each count; and (2) the time frame of the alleged conduct.

First, the government exhibits make clear that the government intends to allege at trial that more defendants than those named in a count participated in the fraud alleged in the count. For example, Count 2 names only one defendant, but the government's exhibits for Count 2 include trading and social media posts for five of the trial defendants. Similarly, Count 4 names only one defendant, yet the government's exhibits for Count 4 include trading data and social media posts for all seven trial defendants. Below is a chart comparing the number of defendants named in each count to the number of defendants whose conduct is included in the government's exhibits.

Counts/Government Exhibits 2 – 20				
Count/ Gov't Ex.	Stock	Trial Defendants Allegedly Involved		
		Superseding Indictment	Government Exhibits	Difference
2	ONTX	1	5	+4
3	SXTA	3	3	---
4	CBAT	1	7	+6
5	TRCH	3	7	+4
6	VISL	0	6	+6
7	GTT	2	5	+3
8	RGLS	1	5	+4
9	RGLS	1	5	+4
10	SURF	4	4	---
11	ALZN	3	7	+4
12	UPC	3	4	+1
13	ABVC	1	2	+1
14	CEI	2	7	+5
15	DATS	2	7	+5
16	NAKD	3	6	+3
17	EZFL	3	6	+3
18	MYSZ	1	7	+6
19	PIXY	1	4	+3
20	BBI	1	6	+5

Second, the government's exhibits cover time frames beyond the time frames listed in the superseding indictment. For example, Count 6 charges conduct in "March 2021," but the government's exhibits go back to February 4, 2021. Likewise, Count 14 charges conduct in "September through October 2021," but the government's exhibits cover the time period August 2 through November 3, 2021.

The chart below shows the time frame and number of days allegedly pertaining to each count according to the government's exhibits.

Counts/Government Exhibits 2 – 20			
Count/ Gov't Ex.	Stock	Time Frame	Days
2	ONTX	July 1 – Aug. 31, 2020	62
3	SXTС	Sept. 10 – Sept. 21, 2020	12
4	CBAT	Jan. 4 – Feb. 26, 2021	54
5	TRCH	Feb. 8 – Mar. 4, 2021	25
6	VISL	Feb. 4 – Mar. 30, 2021	55
7	GTT	Feb. 24 – Mar. 17, 2021	22
8	RGLS	Mar. 4 – Mar. 29, 2021	26
9	RGLS	June 1 – June 30, 2021	30
10	SURF	May 5 – June 15, 2021	42
11	ALZN	June 15 – July 23, 2021	39
12	UPC	July 19 – July 28, 2021	10
13	ABVC	Aug. 3 – Aug. 17, 2021	15
14	CEI	Aug. 2 – Nov. 30, 2021	121
15	DATS	Aug. 13 – Dec. 3, 2021	113
16	NAKD	Sept. 3 – Oct. 29, 2021	57
17	EZFL	Sept. 15 – Oct. 26, 2021	42
18	MYSZ	Oct. 7 – Nov. 30, 2021	55
19	PIXY	Mar. 25 – Apr. 13, 2022	20
20	BBI	Apr. 11 – Apr. 25, 2022	15
Total			815 Days

Government Exhibits 22 – 45: The government states that it intends to introduce evidence at trial related to an additional 24 Episodes referenced in the Government Exhibits 22 through 45.

See ECF 377 at 7. These additional government exhibits include time frames that comprise a combined total of 578 days and involve multiple trial defendants as demonstrated in the chart below.

Government Exhibits 22 – 45				
Gov’t Ex.	Stock	Time Frame	Days	Trial Defendants Allegedly Involved
22	AEMD	Sept. 15 – Oct. 5, 2021	21	3
23	AERC	Mar. 15 – Mar. 22, 2022	8	2
24	AIHS	Sept. 16 – Sept. 30, 2021	15	3
25	AREC	Oct. 2 – Oct. 30, 2020	29	5
26	BAOS	Apr. 13 – May 2, 2022	20	5
27	BBLG	Jan. 4 – Jan. 28, 2022	25	3
28	CNTX	Oct. 20 – Dec. 21, 2021	63	7
29	FCEL	Oct. 4 – Oct. 22, 2021	19	6
30	HCWB	Oct. 15 – Oct. 22, 2021	8	4
31	METX	Oct. 12 – Dec. 6, 2021	56	6
32	MFH	Mar. 18 – Mar. 24, 2021	7	5
33	MITQ	July 22 – Aug. 4, 2021	14	3
34	ONTX	Feb. 1 – Mar. 19, 2021	47	6
35	SFET	Aug. 3 – Aug. 17, 2021	15	3
36	SNOA	Apr. 26 – May 6, 2021	11	4
37	STAF	June 21 – Aug. 3, 2021	44	5
38	SUPV	Jan. 29 – Mar. 9, 2021	40	4
39	SURG	Nov. 8 – Nov. 12, 2021	5	5
40	SXTС	July 13 – July 27, 2021	15	5
41	VRPX	June 30 – July 23, 2021	24	5
42	VTVT	July 13 – Aug. 25, 2020	44	4
43	XRTX	Nov. 1 – Nov. 12, 2021	12	7
44	YVR	Aug. 26 – Sept. 14, 2021	20	3
45	ZSAN	Mar. 21 – Apr. 5, 2022	16	3
Total			578 Days	

The Court should limit the government’s presentation of evidence to the 19 securities fraud counts alleged in the superseding incitement to avoid unnecessarily lengthening the trial. Not only will counsel for each of the defendants listed in the government’s exhibits need to cross examine

the government's witnesses, but each defendant will also likely call an expert and possibly other witnesses to rebut the government's exhibits. A trial on the 21 counts in the superseding indictment, with seven defendants at trial, will already be a very lengthy trial. Adding 24 stocks with a combined time frame of 578 days would likely extend the trial by at least a month and result in cumulative and duplicative presentation of evidence.

Mr. Hennessey, therefore, respectfully requests that the Court limit the government's presentation of evidence at trial to evidence pertaining to the 19 securities fraud counts in the superseding indictment.

Respectfully submitted,

JACKSON WALKER LLP

/s/ Laura M. Kidd Cordova _____

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**ATTORNEYS FOR DEFENDANT
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CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2023, a true and correct copy of the foregoing was served electronically on all persons via the Court's CM/ECF system.

/s/ Laura M. Kidd Cordova _____

Laura M. Kidd Cordova